

## §716.2

ten times higher than the applicable declaration threshold. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold, are subject to inspection.

(3) *Schedule 3 plant sites.* Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate they will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical.

NOTE TO §716.1(b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals (UDOC) during the previous calendar year.

NOTE 1 TO §716.1(b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

NOTE 2 TO §716.1(b)(4): All UDOC plant sites that submit a declaration based on §715.1(a)(1)(i) of the CWCR are subject to a routine inspection.

NOTE 3 TO PARAGRAPH (b)(4): Any UDOC plant site that is eligible, in accordance with §715.1(d)(2) of the CWCR, to submit a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year (*i.e.*, a plant site that will be below the inspection threshold level indicated in paragraph (b)(4) of this section during the current calendar year), but that fails to do so, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of the CWCR under this part, BIS will:

- (1) Lead on-site inspections;
- (2) Provide Host Team notification to the facility of an impending inspection;

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(3) Take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection;

(4) Dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation;

(5) Escort the Inspection Team on-site throughout the inspection process;

(6) Assist the Inspection Team with verification activities;

(7) Negotiate the development of a site-specific facility agreement, if appropriate (see §716.6); and

(8) Ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

[71 FR 24929, Apr. 27, 2006, as amended at 72 FR 14409, Mar. 28, 2007]

### §716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities*—(1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections*—(i) *Initial inspections.* (A) During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see §716.6 of the CWCR) for the conduct of routine inspections.

(B) For new Schedule 1 production facilities declared pursuant to §712.4 of the CWCR, the U.S. National Authority, in coordination with BIS, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (see §716.6 of the CWCR) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites—(1) Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except in accordance with the provisions of the Convention;

(B) Consistency with declarations of production, processing or consumption of Schedule 2 chemicals; and

(C) Non-diversion of Schedule 2 chemicals for activities prohibited under the Convention.

(ii) During initial inspections, Inspection Teams shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The Inspection Team will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections—(i) Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed

in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see §716.6 of the CWCR).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see §716.6 of the CWCR), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites—(1) Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see §716.6 of the CWCR). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled discrete organic chemical plant sites—(1) Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1

chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see §716.6 of the CWCRC). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

**§716.3 Consent to inspections; warrants for inspections.**

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, BIS will seek administrative warrants as provided by the Act.

**§716.4 Scope and conduct of inspections.**

(a) *General.* Each inspection shall be limited to the purposes described in §716.2 of the CWCRC and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) *Scope—(1) Description of inspections.* During inspections, the Inspection Team:

(i) Will receive a pre-inspection briefing from facility representatives;

(ii) Will visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels

and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection;

(iii) May visually inspect other parts or areas of the plant site to clarify an ambiguity that has arisen during the inspection;

(iv) May take photographs or conduct formal interviews of facility personnel;

(v) May examine relevant records; and

(vi) May take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority, at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission pursuant to paragraph (a) of this section, except for information subject to export control under ITAR (22 CFR parts 120 through 130) (see paragraph (b)(3) of this section). When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(3) *ITAR-controlled technology.* ITAR-controlled technology shall not be divulged to the Inspection Team without U.S. Government authorization (such technology includes, but is not limited to technical data related to Schedule 1 chemicals or Schedule 2 chemicals identified in Note 2 to Supplement No. 1 to Part 712 or Note 1 to Supplement No. 1 to Part 713, respectively, of the CWCRC; also see 22 CFR Section 121.1, i.e., the United States Munitions List). Facilities being inspected are responsible for the identification of ITAR-controlled technology to the BIS Host Team, if known.